

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-03-0014
Hunts Point Tomato Co., Inc.)	
)	
Respondent)	
)	

Denial of Respondent's Petition to Rehear and Reargue

On April 21, 2005, I issued a decision holding that Hunt's Point Tomato Co., Inc. committed willful, flagrant and repeated violations of section 2(4) of the Perishable Agricultural Commodities Act, and I ordered that the facts and circumstances of the violations be published. Respondent filed a Petition to Rehear and Reargue, pursuant to §1.146(a) (3) of the Rules of Procedure. I have reviewed the Petition, and the Response filed by Complainant, and I find that the Petition contains nothing that would cause me to modify my April 21 decision. Therefore the Petition is denied.

The Petition lists, without explanation, five Findings of Fact and two Conclusions of Law that it contends I should have made in the April 21 decision. Several of the suggested Findings were directly considered and ruled on by me in my earlier decision, and in the absence of any proffered reason by Respondent as to why I should change my Findings, I decline to do so. One of the assertions—that I should have inquired into aspects of how Respondent would make payments of the unpaid invoices—is puzzling, in that counsel for Respondent, who declined to put on any affirmative testimony, calling no

witnesses and only introducing exhibits as part of his cross-examination, appears to misapprehend my role vis-à-vis his role at the hearing. That he elected to present no evidence was his decision. In any event, the fact that Respondent had failed to make payments to its numerous creditors for a lengthy period of time was never seriously disputed, and squarely resolves the case as a no-pay case under *In re. Scamcorp, Inc.*, 57 Agric. Dec. 527 (1998). The amount of assets involved in the stay in the federal court action was not material to my decision, nor was the fact that the stay existed in the first place. What is material is that Respondent owed substantial amounts on long-standing debts directly covered by the PACA.

The provisions of my April 21, 2005 order shall become effective on the first day after this decision becomes final. Unless appealed pursuant to the Rules of Practice at 7 C.F.R. § 1.145(a), this decision becomes final without further proceedings 35 days after service as provided in the Rules of Practice, 7 C.F.R. 1.142(c)(4).

Done at Washington, D.C.
this 10th day of August, 2005

MARC R. HILLSON
Chief Administrative Law Judge